

Attachment C

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH INCORPORATED,
11020781 CANADA INC., DANIEL
FAGERBERG LARSEN, ROBERT JAMES
DUTHIE NELSON, SEBASTIAAN JUAN
THEODOOR CRUDEN A/K/A
“LUZYPHER,” JOHN DOE NO. 4 A/K/A
“GOODMAN,” YUNXUAN DENG A/K/A
“YIMOSECAI,” ANTHONY ROBINSON
A/K/A “RULEZZGAME,” EDDIE TRAN
A/K/A “SENTIENT”, CHENZHIJIE CHEN
A/K/A “CHENZHIJIE402, DSOF, CVR
37454303, MARTA MAGALHAES A/K/A
MINDBENDER A/K/A BLUEGIRL, AND
JOHN DOES NO. 9-20,

Defendants.

Case No. 2:21-cv-01112-TL

DECLARATION OF JAMES BARKER
IN SUPPORT OF MOTION FOR
DEFAULT JUDGMENT

1. I am the Deputy General Counsel of Bungie, Inc (“Bungie”) and a frequent player of *Destiny 2* with more than 1700 hours logged. I have supervised Bungie’s strategic litigation against anticheat circumvention products (“Cheat Software”) since 2020, have attended every deposition, interview, or proceeding yet conducted by Bungie against traffickers in circumvention technology, and have become familiar with Bungie’s game security measures, the

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MILLER NASH LLP
ATTORNEYS AT LAW
T 206.624.8300 | F 206.340.9599
PIER 70
2801 ALASKAN WAY, STE 300
SEATTLE, WASHINGTON 98121

1 features common among circumvention products, and the features at issue in the present
 2 litigation. I submit this declaration in support of Plaintiff's Motion for Default Judgment against
 3 Defendant Daniel Larson. The facts stated herein are true based on my personal knowledge and
 4 review of corporate documents and information, and I could and would testify competently
 5 thereto if called to do so.

6 2. Bungie is the developer and publisher of *Destiny 2*, a first-person multiplayer
 7 shared-world game played by more than 30 million people around the globe. *Destiny 2* users play
 8 the game together from wherever in the world they are located, interacting with each other and
 9 the environment and impacting each other's gameplay with their own actions. This interaction
 10 takes place in a wide range of game activities, including both Player v. Player ("PvP") modes
 11 and Player v. Environment ("PvE") modes. Players interact with each other in both game modes,
 12 working cooperatively in PvE modes to complete various missions, and both cooperatively and
 13 competitively in PvP modes. These interactions between players are a critical component of
 14 *Destiny 2*.

15 3. Bungie registers numerous copyrights in *Destiny 2*, including to the software and
 16 audiovisual components of *Destiny 2* and its major expansions. Annexed hereto as composite
 17 Exhibit 1 are copies of the registration certificates for *Destiny 2* as software and as an
 18 audiovisual work, and to *Destiny 2: Beyond Light* as software and as an audiovisual work.
 19 Bungie has the sole right, title and interest in *Destiny 2* and its expansions.

20 4. As Deputy General Counsel, I am familiar with the business model Bungie
 21 employs, and the initiatives the company is engaged in. I am also familiar with the *Destiny 2*
 22 software at a high level and with its anticheat measures.

23 5. *Destiny 2* can be characterized as a world simulation that takes place across many
 24 computers. Like most major multiplayer video games, *Destiny 2* consists of many elements,
 25 some of which are contained on our servers, and some of which are part of our client software.
 26 The client software, which is made available to players for the sole purpose of playing *Destiny 2*,

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1 resides on the player's computer. Its function is to connect the player's computer to the *Destiny 2*
2 servers and to other players' computers to allow players to play the *Destiny 2* video game
3 together. The client software loads into memory and stores important data including, but not
4 limited to, the character's position and facing, health and shields, and ammunition. These values
5 are communicated to the server, and change based on the data sent back from the server.

6 6. High-value game data like those described above are protected from exposure or
7 manipulation using obfuscation and encryption. For example, information about player
8 positioning and facing is obfuscated in memory so that it can only be accessed by the *Destiny 2*
9 process during gameplay; and information sent to and from users' computers to Bungie's servers
10 is encrypted. Only the *Destiny 2* process is authorized access, and those protections exist
11 specifically to protect the game from cheating. Numerous technological protections are
12 embedded in the client that, ordinarily, prevent access to game data and prevent injection or
13 attachment of foreign processes into *Destiny 2*; and specific categories of game data are
14 protected because of their relevance to those who would abuse access to cheat.

15 7. That protection is critical because *Destiny 2* is a "free-to-play" game; Bungie does
16 not sell the base game, which users can freely download on PC, PlayStation, and other game
17 systems, and players may play the base game for free indefinitely. Being "free to play" also
18 means that developers of circumvention software face only Bungie's technological and legal
19 hurdles to accessing the base game, (without an additional financial hurdle,) which they must do
20 to reverse-engineer against *Destiny 2*.

21 8. As a free-to-play game, *Destiny 2* enjoys a broader onramp for new players, but is
22 more vulnerable to attacks on the game's integrity. Bungie's income stream from *Destiny 2* relies
23 heavily on long-tail customer satisfaction in the form of sales of expansions, season passes, and
24 the premium currency "silver" which can be redeemed for cosmetic content (such as 'emotes'
25 and ornamental design options that do not affect gameplay), which players can choose to
26 purchase if they enjoy their experience. We go to great efforts to provide players with the best

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1 experience we can, both because we only earn money when our players are happy and because
 2 we want to produce a great game. The more fun the game is to play, the more likely it is that a
 3 player will enjoy the game enough to invest in additional content. Like many Bungie employees,
 4 I am a *Destiny 2* player because I enjoy playing the game.

5 9. As part of our effort to make the game fun to play, we frequently release new
 6 narrative content, expanding the story of the game and the universe in which the game is set. We
 7 invest substantial resources in developing this new content, some of which becomes part of the
 8 free-to-play game, and some of which becomes part of paid expansions. Since its launch in 2017,
 9 *Destiny 2* has had many major paid expansions including *Destiny 2: Forsaken*, *Destiny 2:*
 10 *Shadowkeep*, and *Destiny 2: Beyond Light*. The latest expansion, *Destiny 2: The Witch Queen*,
 11 released on February 22, 2022; the next, *Destiny 2: Lightfall*, releases on February 28, 2023.
 12 Bungie also releases new “seasonal” content, to which users can purchase access, several times
 13 per year.

14 10. Our efforts to provide a game that our players enjoy are not limited to developing
 15 the new narrative content that is found in our expansions and seasons. For many of our players,
 16 PvP gameplay is a critical part of their experience. We also invest considerable resources in
 17 developing these aspects of the game. One of the reasons that PvP is important to many players
 18 is because it provides opportunities for them to build up their characters and to earn accolades for
 19 competitive achievement. For example, success in competitive PvP gameplay is the only avenue
 20 to obtain specific cosmetics and in-game ‘loot,’ such as weapons or armor, that ‘drop’ as rewards
 21 for PvP play.

22 11. As part of our overall *Destiny 2* business model, we offer players various rewards
 23 and items of value if they reach certain accomplishments during their participation in *Destiny 2*
 24 gameplay. For example, players who achieve uncommon success in the end-game PvP mode
 25 ‘Trials of Osiris’ can earn the coveted title, ‘Flawless,’ which they can display with their
 26 character’s name so that other players in the game see that they reached this in-game milestone.

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1 Certain in-game milestones also allow players the ability to acquire exclusive merchandise, such
 2 as our “raid jackets,” which may be purchased only by players who complete our highest-level
 3 PvE endgame content (“raids”) within a designated period of time after the raid is released.
 4 Cheaters can (by unfairly taking these unearned awards for themselves) prevent honest players
 5 from receiving them, no matter how skilled those players might be. Even a small number of
 6 cheat users have a disproportionately large, negative impact on honest players. The aspirational
 7 end-game PvP content concentrates players with the highest apparent skill, whether that skill is
 8 earned through practice or bought and applied in the form of cheat software in violation of
 9 *Destiny 2*’s LSLA. Users of cheat software attack not just the integrity of the game as a whole,
 10 but directly attack the experiences of those players who are the most personally invested in the
 11 *Destiny 2* community.

12 CHEATERS

13 12. Achieving the various *Destiny 2* rewards requires substantial time and
 14 commitment. Most *Destiny 2* players enjoy seeing their commitment pay off as they climb the
 15 skill curve. And they – and we as a company – expect others to also play fairly and honestly.
 16 Some users of cheat software want to gain rewards or flex on honest players without putting in
 17 the honest effort that is required for achievement. Others are tied to ‘account recovery’ and
 18 ‘boosting’ services, in which players use cheat software to rapidly complete in-game activities,
 19 including aspirational PvP and PvE content, on the accounts of other players who would pay to
 20 have in-game ‘loot’ or accolades, effectively paying a ‘booster’ to play the game repetitively for
 21 them. Around September 2021, shortly after the instant lawsuit was filed and after *Destiny 2*
 22 began to employ BattlEye anticheat software in addition to Bungie’s in-house tools, we observed
 23 a rapid and several-fold increase in the advertised price of tracked ‘boosting’ services. The
 24 correlation strongly suggests that cheat software is a practical necessity for that parasitic industry
 25 to function efficiently. We have no data to suggest that players using ‘boosting’ services are
 26 informed when a ‘booster’ plans to use cheat software and thereby imperil their account.

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13. Cheating imperils the continued success of *Destiny 2*. As an ongoing, narrative-driven live-service game, *Destiny 2* requires continued reinvestment to remain profitable. Bungie does well when players enjoy *Destiny 2* so much that they are willing to invest in our expansions and cosmetic offerings. When any live-service game becomes saturated with cheaters, or gains that appearance, honest players may find success impossible and rapidly become disillusioned with the game, stop playing it, and move on to other pastimes.

14. When players leave a game because of cheating, they also stop discussing and promoting the game, whether individually or as fans, influencers, and creators. The proliferation of cheating has led to bad press within the video game industry as a whole. See Exhibit 1. That thousands of players used Wallhax's software to cheat at *Destiny 2* helped lead to the perception that the game had a cheating problem. The reputational damage caused by cheating is difficult to mitigate, and it is impossible to fully quantify the business that we lose as a result.

15. As a frequent *Destiny 2* player I can viscerally understand the aggravation of encountering a cheat software user. Playing against someone who has access to infinite ammunition, unfailing aim, and an ability to see through walls naturally turns any game into a frustrating experience. I have also witnessed a selection of cheat software modes including the eponymous 'wallhack,' which shows a cheat user the location of players normally hidden from view; 'aimbot,' which causes the cheat user's weapon to mechanically 'snap' to the critical point of an enemy combatant or player in response to a key press, and others. I believe that any *Destiny 2* player using a selection of the most common cheat features would find it trivial to win every engagement against a legitimate player, every time. When a cheat software user loses an engagement, it's done selectively and intentionally to avoid suspicion.

BUNGIE'S ANTI-CHEATING MEASURES

16. We take many steps to deal with cheating and with cheaters, in support of our efforts to protect *Destiny 2*. As Deputy General Counsel, I am involved in these efforts. Our efforts to address cheating take many forms, some of which operate at the level of the individual

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1 player, and others that operate at a broader scale.

2 17. Our efforts to combat cheating begin with the terms of our Limited Software
3 License Agreement (“LSLA”). The LSLA is a clickwrap agreement – *Destiny 2* users must
4 indicate their agreement to the LSLA to access the game the first time they download the
5 software, when they attempt to log into it from a new account, and every time the software
6 undergoes a major patch or a revision to the LSLA. They do so by first viewing the LSLA and
7 then indicating that they agree to the terms by executing a ‘long-click’ to submit the executed
8 agreement to Bungie. Bungie would not allow any player access to *Destiny 2* if it knew they
9 intended to breach the LSLA at the time they were purporting to agree to it, and it is impossible
10 to play *Destiny 2* without indicating that agreement. A true and correct copy of the LSLA in
11 effect at the times relevant to this case is annexed hereto as Exhibit 2.

12 18. The LSLA includes a number of express conditions. One of the conditions of the
13 LSLA is that the player refrain from the use of cheating software. Other conditions bar players
14 from reverse engineering the game, decompiling the game, disassembling the game, or creating
15 derivative works of the game. Still another provision prohibits players from developing cheat
16 software for the game. The LSLA makes it clear that these provisions are conditions of the
17 license and clearly and explicitly warns players that violating the conditions will vitiate the
18 license and render further use of *Destiny 2* infringing.

19 19. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

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MILLER NASH LLP
ATTORNEYS AT LAW
T 206.624.8300 | F 206.340.9599
PIER 70
2801 ALASKAN WAY, STE 300
SEATTLE, WASHINGTON 98121

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 20. Bungie has also contracted with other companies, at substantial expense, for the
7 use of anti-cheating technologies. These technologies automatically detect cheating, although
8 they require constant and costly development as cheat makers continuously attempt to find ways
9 to evade these protection measures. Bungie also enables players who suspect competitors of
10 cheating to file reports through multiple channels, allowing Bungie to analyze gameplay records
11 to ban cheat users and to detect signatures of cheat software that permit Bungie to improve its
12 automated detections.

13 21. When players cheat, we ban them from the game. When players log in, the status
14 of their account is checked. If a cheater attempts to connect to the game with a banned account,
15 the attempt is rejected and the player receives a message on their screen informing them that they
16 have been banned. These bans are implemented and enforced by computer programs and control
17 access to *Destiny 2*.

18 22. We employ additional methods to detect players who attempt to evade bans by
19 creating new accounts. This includes hardware identification ("Hardware ID.") Hardware ID
20 compiles a hash from innate characteristics of a player's device in order to create a device's
21 unique signature, and blocks attempts to create new accounts from devices that have been the
22 subject of bans.

23 23. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

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MILLER NASH LLP
ATTORNEYS AT LAW
T 206.624.8300 | F 206.340.9599
PIER 70
2801 ALASKAN WAY, STE 300
SEATTLE, WASHINGTON 98121

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 **BUNGIE'S DAMAGES**

5 24. Bungie has been forced to expend substantial resources in its efforts to combat
6 cheating software, including the Wallhax cheats. We must, for example, release security updates
7 to the software that are more frequent and more extensive than we would otherwise prefer, in
8 order to re-obfuscate information and data structures that cheat designers have located. We are
9 forced to continually engage in additional development of our own in-house cheat detection
10 efforts. And we have been forced, at substantial expense, to license several forms of anti-cheat
11 software, including but not limited to BattlEye, plus necessary engineering to integrate those
12 tools with *Destiny 2*.

13 25. There is no doubt that players using Wallhax's software cost Bungie business and
14 diminished the *Destiny 2* player base. While it is impossible to quantify the precise damage that
15 is caused by each cheater, as that depends in part on the cheater's effects on the *Destiny 2*
16 community, Bungie expended a minimum of \$2,000,000 on game security staffing and software
17 during the time that Wallhax offered its *Destiny 2* cheats.

18 26. During that period, Bungie has been aware of three major providers of cheat
19 software: Ring -1, AimJunkies, and Wallhax. Each of these cheats functions differently, and
20 Bungie has been forced to combat each of these cheats independently. The more complex and
21 different the cheat is, the more expensive it is to combat, both in money and time.

22 27. The Wallhax cheat operated as a '.dll injection' cheat, whereby a common loader
23 provided by the Wallhax enterprise accessed a cheat payload from Defendants' remote server,
24 and loaded the payload from the internet directly to memory so as not to leave a trace on disk.
25 This division of cheat software between a loader and a secretive payload obscures the specific
26 methods used to evade, bypass, or disable *Destiny 2*'s protective measures, and required a

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1 substantial amount of time, attention, and money to respond to.

2 28. Bungie has also incurred a total to date of \$338,112.92 in litigation costs related
3 to this action, including expert fees. Of that amount, \$80,263.92 was paid for expenses, such as
4 expert fees and filing fees, and the remainder is the attorneys' fees we have been billed and paid
5 through the date of this Declaration.

6
7 DATED this 20th day of January, 2023 at Seattle, WA.

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9 

10
11 James Barker

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MILLER NASH LLP
ATTORNEYS AT LAW
T 206.624.8300 | F 206.340.9599
PIER 70
2801 ALASKAN WAY, STE 300
SEATTLE, WASHINGTON 98121